

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Infinity Broadcasting Corporation of Los Angeles	)	Control No. 97050319
	)	NAL/Acct. No. 818ed0017
Licensee of Station KROQ-FM	)	FRN: 0001-5460-19
Pasadena, California	)	
Facility ID # 28622	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 9, 2002**

**Released: May 24, 2002**

By the Commission: Commissioners Abernathy, Copsps and Martin issuing separate statements

1. In this *Memorandum Opinion and Order*, we deny an Application for Review timely filed on April 20, 2001, by Infinity Broadcasting Corporation of Los Angeles (“Infinity”), licensee of Station KROQ(FM), Pasadena, California. Infinity seeks review pursuant to 47 C.F.R. § 1.115 of a *Memorandum Opinion and Order*<sup>1</sup> of the Chief, Enforcement Bureau, (“*Reconsideration Order*”) which denied reconsideration of a monetary forfeiture in the amount of two thousand dollars (\$2,000) against Infinity for violation of 18 U.S.C. § 1464, which prohibits the broadcast of indecent material.

**I. BACKGROUND**

2. In the *NAL*, the Mass Media Bureau found, in response to a listener complaint, that the broadcast on KROQ-FM of the song “You Suck” by the group Consolidated on March 28, 1997, at approximately 9:10 p.m., violated 18 U.S.C. § 1464. In its response to the *NAL*, Infinity admitted that a version of the “You Suck” song was aired at approximately 9:10 p.m. on March 28, 1997. It asserted that Station KROQ-FM possessed at least two versions of the song. One of the versions possessed by KROQ(FM) was the unedited version, a transcript of which is attached to the *NAL*. A second version was made by the station because an announcer “thought the unedited version was not acceptable for broadcast.” Infinity asserted that it was unable to determine which version of the song was aired on March 28, 1997. In support of its position, Infinity filed an affidavit from a station announcer who admitted that he played some version of the “You Suck” song on the day in question. The announcer stated that he did not recall which version of the recording he aired and that he did not actually listen to the entire recording when it aired. The announcer and the station’s General Manager also indicated that it

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<sup>1</sup> *Infinity Broadcasting Corporation of Los Angeles*, 16 FCC Rcd 6867 (Enf. Bur. 2001). The *Reconsideration Order* denied reconsideration of *Infinity Broadcasting Corporation of Los Angeles*, 15 FCC Rcd 10667 (Enf. Bur. 2000) (“*Forfeiture Order*”) which issued a forfeiture order after consideration of the licensee’s response to a notice of apparent liability for forfeiture, *Infinity Broadcasting Corporation of Los Angeles*, 13 FCC Rcd 25349 (Mass Media Bur. 1998) (“*NAL*”).

was their opinion that numerous complaints would have been forthcoming if the unedited version had been played. However, they stated, no complaints other than that of the complainant were received. Further, Infinity states that the station does not retain copies of its broadcasts. The record reflects that the original, unedited version of the song includes the words “pubic,” “dick,” “pussy,” and “clit,” which are deleted in the edited version. The licensee did not dispute the finding of the *NAL* that the unedited version of the song would be indecent.

3. Because the Mass Media Bureau did not have a tape or transcript of the actual broadcast, on April 1, 1998, before it issued the *NAL*, it sent a letter to the complainant with a copy of the edited version of the “You Suck” song supplied by the station. The Mass Media Bureau asked the complainant to confirm whether she heard the edited version or the version on the CD that was submitted with her complaint (the original unedited version). The Mass Media Bureau also asked her to explain the basis of her belief as to which version she heard broadcast on Station KROQ(FM). The complainant responded by a signed written statement indicating that she recalled hearing the words “pubic,” “dick,” “pussy,” and “clit” in the broadcast, none of which were contained in the edited version of the song provided by Infinity. The complainant’s response was not referenced in the *NAL* and the licensee was not asked to comment on it. It was first discussed in the *Forfeiture Order*, which found that the forfeiture proposed in the *NAL* was warranted.

4. Initially, the *Reconsideration Order* rejected the licensee’s contention that it was denied due process because the *NAL* had not referenced the complainant’s response, which was first disclosed to the licensee in the *Forfeiture Order*, because its comments concerning the complainant’s response would be fully considered in the *Reconsideration Order*. It noted that the licensee did not submit any new evidence in light of the complainant’s response.

5. The *Reconsideration Order* found that the complainant’s recollection of having heard the words “pubic,” “dick,” “pussy,” and “clit” in the KROQ(FM) broadcast provided sufficient probative evidence to conclude that the unedited version of the song was broadcast, particularly in the absence of evidence to the contrary. The *Reconsideration Order* found that the licensee’s ignorance as to which version of the song was broadcast did not constitute evidence that it in fact broadcast the edited version. Moreover, it noted that the licensee was aware of the inappropriate nature of the unedited version of the song and therefore should have taken precautions to ensure that the unedited version was not inadvertently broadcast. It also found the opinions of KROQ(FM) staff members that numerous complaints would likely have resulted from the broadcast of the unedited version of the song to be speculative, particularly because the basis for the opinions was not explained. The *Reconsideration Order* accordingly found that the licensee had provided no evidence effectively rebutting the complainant’s recollection that she heard words included only in the unedited version of the song.

6. The *Reconsideration Order* further rejected the licensee’s contention that the complaint should have been rejected because the initial complaint was not supported by a tape or transcript of the broadcast. It found that, by submitting a copy of the unedited version of the song as obtained from a CD, the complainant substantially complied with the requirement by providing a “significant excerpt” from the broadcast, even though she had not transcribed the excerpt herself. Additionally, it noted that the submission of a tape, transcript, or significant excerpts is not a requirement, but a general practice used by the Commission to assist in the evaluation of indecency complaints.<sup>2</sup>

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<sup>2</sup> We note that a significant excerpt is essentially the same thing as a partial transcript, that is, enough words and context of what was said and by whom to make a determination of whether the material was indecent.

7. The *Reconsideration Order* also disagreed with the licensee's contention that the complainant's recollection should not have been accepted because it had not been tested at hearing. It noted that the Communications Act of 1934, as amended ("Act") permits the imposition of a forfeiture without a hearing.<sup>3</sup> It further noted that the Act protects the rights of parties subject to a forfeiture assessed without a hearing by providing that such a forfeiture cannot be used to the prejudice of the party unless it is paid or a court of competent jurisdiction has issued a final order after a trial *de novo* requiring that the forfeiture be paid.<sup>4</sup>

8. In its Application for Review, the licensee renews its objection to the alleged departure from what it generally refers to as the "tape or transcript requirement." It urges that this requirement is not a matter of administrative convenience, but a bedrock procedural requirement necessary to ensure due process because the Commission acts as both prosecutor and judge in imposing a forfeiture. It further contends that the Bureau's action was inconsistent with prior actions in *Nationwide Communications, Inc.*, 6 FCC Rcd 3695 (Mass Media Bur. 1990) ("*Nationwide*") and *Mr. Steve Bridges*, 9 FCC Rcd 1681 (Mass Media Bur. 1994) ("*Bridges*"). It also claims that there is an absence of announced procedures for resolving factual disputes involving indecency complaints; hence, the staff cannot lawfully impose a forfeiture where no tape or transcript of the actual broadcast exists. According to the licensee, imposing a forfeiture under the circumstances of this case amounts to use of a "new standard," which is not a lawful exercise of agency power. In support, the licensee cites *Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705, 2706 (1987) (subsequent history omitted) for the proposition that a change in approach to indecency enforcement obligated the Commission to issue a warning, not a forfeiture.

9. The licensee also contends in its Application for Review that reliance on the untested recollection of the complainant puts the Commission in the position of choosing between the complainant's and the licensee's "conflicting version of the facts." It cites the "opinion of KROQ's experienced radio personnel" that the playing of the unedited version of the song would likely have resulted in numerous complaints. The licensee does not dispute the *Reconsideration Order*'s finding that these opinions were unexplained, but suggests that the staff should have sought clarification from the licensee as it did by requesting the complainant's reaction to the edited version of the song. The licensee also urges that reliance on the complainant's recollection was improper in the absence of a hearing or other opportunity to test the credibility of her recollection.

10. The licensee further contends that it was injured because the Mass Media Bureau did not disclose its reliance on the complainant's response in the *NAL*. It urges that the Enforcement Bureau's consideration of its comments on the complainant's response in the *Reconsideration Order* was inadequate because of the passage of time.

11. The licensee finally requests in a footnote that we review the Bureau's rejection in the *Forfeiture Order*<sup>5</sup> of its contention that the indecency standard is unconstitutional in light of *Reno v. ACLU*, 521 U.S. 844 (1997) ("*Reno*"). The licensee asserts that the indecency standard is vague, overbroad and unenforceable.

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<sup>3</sup> Section 503(b) of the Act, 47 U.S.C. § 503(b).

<sup>4</sup> Section 504(a) and (c) of the Act, 47 U.S.C. § 504(a) and (c).

<sup>5</sup> 15 FCC Rcd at 10668-69.

## II. DISCUSSION

12. Based upon our review of Infinity's Application for Review and the record in this matter, we find no reason to reverse the Bureau's decision in this case. We will therefore deny the Application for Review and affirm the forfeiture in the amount of two thousand dollars (\$2,000) assessed in this proceeding.

13. We disagree with the licensee's contention that the Bureau departed from our practice that a complaint should include a significant excerpt or full or partial tape or transcript of the allegedly indecent program.<sup>6</sup> The *Reconsideration Order* concluded that the complainant substantially complied with our general practice by providing a "significant excerpt" from the broadcast at issue.<sup>7</sup> Infinity's Application for Review focuses on the complainant's failure to provide a tape or transcript. Thus, it ignores the actual conclusion of the *Reconsideration Order* that the complainant provided a "significant excerpt." It accordingly fails to articulate any reason for reversing that conclusion.

14. In making indecency determinations, context is key. Accordingly, it is imperative that the Commission have sufficient information regarding the words and language used during an alleged indecent broadcast and the meaning and context of those words and language. Our general practice of requesting a significant excerpt or a full or partial tape or transcript is a way in which the Commission attempts to ensure that it has sufficient information regarding what was said. With this in mind, we agree with the Bureau that the transcript of the song obtained from a commercial recording provided sufficient context to warrant further consideration of the complaint. In this regard, the transcript provided information regarding what was said in the broadcast in question.

15. Nor do we find the fact that the complainant did not provide a tape or transcript of the actual broadcast fatal. The provision of a tape or transcript is not required in support of an indecency complaint. In *Nationwide*, the initial complaint included a tape of a song that was not recorded directly from the broadcast complained of but from an album containing the song. The initial complaint here followed a substantially identical procedure. It sufficed to alert the licensee of the song at issue and enabled it to prepare a response. We thus do not find the *Reconsideration Order* inconsistent with *Nationwide*.

16. Because we find that consideration of the complaint was consistent with the Commission's general practice, we disagree with Infinity's suggestion that a forfeiture should not be imposed under what it contends is a new policy. In any event, its reliance on *Infinity Broadcasting Corporation of Pennsylvania* is misplaced. In that case, we issued a warning rather than a forfeiture where we utilized a substantive definition of indecency that arguably differed from the definition previously utilized. Here, even if Infinity were correct that we have modified the tape, transcript or significant excerpts requirement, that requirement is merely a procedural practice pertaining to the initial processing of indecency complaints. A change in that practice would not alter the substantive policies governing our assessment of the broadcast at issue and thus would not militate in favor of a warning rather than imposition of a forfeiture.

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<sup>6</sup> *Infinity Broadcasting Corporation of Pennsylvania*, 3 FCC Rcd 930, 938 n. 49 (1987); *Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency*, 16 FCC Rcd 7999, 8015 at para. 24 (2001).

<sup>7</sup> *Reconsideration Order*, 16 FCC Rcd at 6870.

17. We also do not find any error in the *Reconsideration Order*'s finding that Infinity broadcast the unedited version of the song. The preponderance of the evidence supports this conclusion in light of the complainant's recollection that she heard the pertinent words that are present only in the unedited version of the song and the absence of any countervailing evidence. We concur with the *Reconsideration Order*'s refusal to accord evidentiary weight to the unsubstantiated and speculative opinion of station personnel as to the likelihood that the broadcast of the unedited version of the song would have generated multiple complaints. Moreover, the staff did not err in failing to request additional information in order to enable Infinity to buttress its claim. This was not inconsistent with the staff's request for additional information from the complainant, which was designed to elicit her response to new evidence submitted by Infinity concerning the existence of an edited version of the song, not to enable her to correct a deficiency in her original complaint. Finally, we are not choosing between "conflicting versions of the facts" because Infinity has presented no version of the facts supported by any evidence beyond its ignorance as to what was broadcast on its station.<sup>8</sup>

18. We also find no inconsistency between the *Reconsideration Order*'s resolution of this case and *Bridges*. In *Bridges*, although the complainant submitted a transcript, the licensee denied that it broadcast the material on the transcript as supplied by the complainant, and the complainant did not have a tape recording of the broadcast to support his claim as to what was actually aired. The staff in *Bridges* correctly concluded that there was an irreconcilable conflict between the complainant and the licensee, which warranted denial of that part of the complaint for failure of proof. In the case now before us, there is no genuine factual dispute between the complainant and the licensee because the licensee here can say only that it does not know which version of the song was broadcast. That is, unlike the licensee in *Bridges*, Infinity has submitted no evidence from someone with personal knowledge of what was actually broadcast. Moreover, as noted in the *Reconsideration Order*,<sup>9</sup> the licensee was aware of the inappropriate nature of the unedited version of the song but failed to take precautions to prevent its inadvertent broadcast, an issue that Infinity's Application for Review does not address. We concur that the licensee should not obtain an evidentiary benefit as a result of this failure. As we have previously stated, a licensee may not avoid liability "by claiming that he doesn't know what did or did not go out over his station." *Community Broadcasters, Inc.*, 55 FCC 2d 28, 35 (1975). Infinity has provided no support, in the indecency context or any other context, for its proposition that if a complainant alleges certain facts and a licensee says it has no idea whether the complainant is correct, the licensee should win.

19. We further reject the licensee's claim that no forfeiture should have been issued without first affording it the opportunity to cross-examine the complainant. As indicated in the *Reconsideration Order*, the Act permits the assessment of a forfeiture without a hearing.<sup>10</sup> The Act protects the rights of parties subject to a forfeiture assessed without a hearing by providing that the forfeiture cannot be used to the prejudice of the party unless it is paid or a court of competent jurisdiction has issued a final order after a trial *de novo* requiring that the forfeiture be paid.<sup>11</sup> Infinity's Application for Review does not address the *Reconsideration Order*'s conclusion in this respect.

20. We also do not find that the fact that the complainant's supplemental statement was not

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<sup>8</sup> Consequently, we do not address whether the edited version of the song is indecent.

<sup>9</sup> *Reconsideration Order*, 16 FCC Rcd at 6869.

<sup>10</sup> Section 503(b) of the Act, 47 U.S.C. § 503(b).

<sup>11</sup> Section 504(a) and (c) of the Act, 47 U.S.C. § 504(a) and (c).

disclosed in the *NAL* warrants the grant of review. Infinity had the opportunity to present its views, which were fully considered by the staff and by us. It has demonstrated no actual injury as a result of the procedure followed.

21. Finally, we find no basis for addressing Infinity's passing request that we review the rejection in the *Forfeiture Order* of Infinity's constitutional arguments. The disposition of those arguments is consistent with our prior ruling in *WQAM License Limited Partnership*, 15 FCC Rcd 2518 (2000), *recon. denied* 15 FCC Rcd 13549 (2000).

### III. ORDERING CLAUSES

22. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 1.115 of the Rules,<sup>12</sup> Infinity Broadcasting Corporation of Los Angeles' Application for Review **IS DENIED**.

23. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment **MUST INCLUDE** the FCC Registration Number (FRN) referenced above, and also should note the NAL/Acct. No. (818ed0017). If the forfeiture is not paid within thirty (30) days of the release of the Memorandum Opinion and Order, the case may be referred to the Department of Justice for collection pursuant to 47 U.S.C. § 504(a).

24. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by certified mail, return receipt requested, to counsel for Infinity, Steven A. Lerman, Esq., Leventhal, Senter and Lerman, P.L.L.C., 2000 K Street, N.W., Suite 600, Washington, D.C. 20006-1809.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>12</sup> 47 C.F.R. § 1.115.

**KROQ-FM Los Angeles, California**  
**March 28, 1997 approximately 9:10 p.m.**  
**“You Suck” by Consolidated**

Conversation between a man and a woman:

Woman: I know you're really proud cause you think you're well hung but I think it's time you learn how to use your tongue. You say you want things to be even and you want things to be fair but you're afraid to get your teeth caught in my pubic hair. If you're lying there expecting me to suck your dick, you're going to have to give me more than just a token lick. Well, you may not like it but you better learn how, cause it's your

turn now. Now, you suck, suck it hard. Go down baby, you suck, lick it hard and move your tongue around. If you're worried about babies, you can lower your risk, by giving me that special cunnilingus kiss. It's on your face that I'm going to sit. You can wiggle, you can jiggle your tongue on my clit. Don't worry about making me have an orgasm. Just take your time and do it with enthusiasm. I can tell it's making you scared, just thinking of it, but you better learn to love it. Now, you suck, suck it hard. Go down baby, you suck, lick it hard and move your tongue around. Now, you suck, suck it hard. Go down baby, you suck, lick it hard and move your tongue around. When you hear safe sex, snicker under your breath. We got to take cover, we're flirting with death. AIDS is our problem, we've got to talk. Break out your dental dam and your latex sock. I'm your latex lover wrapped like a gift. Got my microwave plastic wrap heating up my clit. Dinner's on, get busy with my booty, got a couple of flavors, sweet licorice and fruity. I know your sad luscious pussy with a cover. I'm aching too, can't taste each other. There's no slacking off with an unprotected stroke. This ain't no joke. Sisters, sisters, you've got the power, use it!

You brought a condom right?

Man: Huh?

Woman: I'm unprotected.

Man: Ain't you on the pill?

Woman: Oh, that was great and everything but you know I think it's your turn to go down on me.

Man: I'm tired, I'm tired.

Woman: What do you mean you're tired? Come on baby, come on baby, come on baby, oh.

Man: No, no that's awful. Oh, that tastes terrible.

Woman: You asshole, you shit. I know you think it's a real drag, to suck my cunt when I'm on the rag. Quit making up stories, just give me a break cause I really don't believe that you've got a headache. You tell me it's gross to suck my yeast infection. How do you think I feel when I gag on your erection? Uh. You're wasting your tongue, with lame excuses and lies, get your face between my thighs. Now, you suck, suck it hard. Go down baby, you suck, lick it hard and move your tongue around. Now, you suck, suck it hard. Go down baby, you suck, lick it hard and move your tongue around. Now, you suck.

**SEPARATE STATEMENT OF  
COMMISSIONER KATHLEEN ABERNATHY**

*RE: INFINITY BROADCASTING CORPORATION OF LOS ANGELES, MEMORANDUM OPINION  
AND ORDER*

I support today's decision to uphold the forfeiture against Infinity for broadcast of indecent material. We at the Commission must engage in stringent enforcement of our rules if we are to breed respect of, and deference to, our regulations. The FCC has indecency regulations we are duty-bound to enforce: broadcasters must not air "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community broadcast standards for the broadcast medium, sexual or excretory organs or activities" between the hours of 6:00 a.m. and 10:00 p.m. The unedited version of the song "You Suck" certainly falls within the category of indecent material.

The Commission has significant justification for imposing a forfeiture order in this matter. A transcript of the song obtained from a commercial recording provided adequate context of the words and language used to warrant further consideration of the complaint. And the complainant's recollection of hearing words found in the unedited version of the song is enough to conclude that the unedited song was broadcast, in light of no evidence to the contrary. Infinity relies on the argument that airing the unedited song would have generated more consumer complaints, but no member of its staff has provided affirmative testimony that the edited version was in fact aired. We at the Commission cannot allow a licensee to avoid liability by claiming ignorance of what it broadcasts.

Our indecency rules strike a fair balance between First Amendment rights and protection of our children, and I believe that our enforcement mechanisms strike an appropriate balance between the burdens placed on consumers and the industry.

Furthermore, I would have been inclined to impose a forfeiture even if we found the station aired the edited version. Since the parties in this proceeding were not put on notice of this issue, the order does not speak to the edited version. If it had, I would have been hard pressed to find that the edited version does not also contain indecent material that describes sexual activities in patently offensive terms.

**SEPARATE STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*IN THE MATTER OF INFINITY BROADCASTING CORPORATION OF LOS ANGELES*

*APPLICATION FOR REVIEW OF INDECENCY FORFEITURE*

*Control No. 970503319*

The *Order* adopted by the Commission today takes a significant and welcome step toward clarifying a policy that has disturbed me during my first year on the Commission: the general practice that a complainant must provide a tape or a transcript of the programming at issue in support of an indecency complaint. I have often expressed the view that this policy places an inordinate responsibility on the complaining citizen and that it is the Commission's responsibility to investigate complaints that the law has been violated, not the citizen's responsibility to prove the violations.

Congress charged the FCC with enforcement of the laws limiting the broadcast of "obscene, indecent or profane" language and, pursuant to that charge, it is our responsibility to ensure that indecent programming is not broadcast when children are likely to be in the audience.

This *Order* clarifies that what the station refers to as the "tape or transcript requirement" is not a "requirement" but rather "a procedural practice." The *Order* further clarifies that "the fact that the complainant did not provide a tape or transcript of the actual broadcast" is not fatal and that "the provision of a tape or transcript is not required in support of an indecency complaint."

This step should help correct some broadcasters' erroneous view that without tapes they cannot be found liable on an indecency complaint and that the retention of tapes can only serve to buttress claims against them.

This case also makes clear that the retention of tapes would be a valuable tool in determining what was broadcast and when, information essential to the Commission's enforcement of the indecency law.

I am very pleased to see the Commission begin to respond to the increasingly clear call of the American people for more responsive enforcement of the indecency laws. Today's decision should serve as a wake-up call for those who have been fueling programming's disturbing race to the bottom.

**SEPARATE STATEMENT OF  
COMMISSIONER KEVIN J. MARTIN**

*Re: Infinity Broadcasting Corporation of Los Angeles, Licensee of Station KROQ-FM, Pasadena, California, Memorandum Opinion and Order*

Today we take an important step in clarifying our indecency rule, easing the burden on consumers, and protecting listeners and viewers from offensive broadcast programming. The attached *Order* upholds the forfeiture assessed upon Infinity Broadcasting, and in so doing, it provides important guidance for the industry and consumers.

The FCC plays an important role in protecting Americans—particularly children—from obscene and indecent material. We have been charged by Congress to implement its ban against broadcasting obscene or indecent programming, and I take this responsibility seriously.

The Courts have determined that we may prohibit indecent programming between the hours of 6:00 a.m. to 10:00 p.m. without running afoul of the First Amendment.<sup>1</sup> The *Order* we release today does not alter our indecency rule or our official indecency policy.<sup>2</sup> It does, however, provide much-needed guidance regarding how the rule should be implemented and increases the effectiveness of our rules by clarifying the burden listeners and viewers must meet when filing a complaint.

Many consumers have expressed frustration with how we have applied our indecency rule. They have argued that the Commission has placed too high a burden on viewers and listeners by requiring that they include with any complaint a tape or transcript of the program in question. The result, they say, is an indecency rule that is too rarely enforced. While the Commission's indecency policy has no strict tape or transcript requirement, whether it was Commission *practice* to require a tape or transcript is unclear.<sup>3</sup> I am glad that today we put this controversy to rest – and in a way that decreases the burden on consumers.

As we explain in the *Order*, the Commission will not dismiss a complaint for failure to include a tape or transcript. As long as we have sufficient detail and context to determine whether an identified program is indecent, we will process the complaint. This clarification should facilitate consumers' ability to file a complaint when they hear or view programming they believe to be indecent.

Moreover, if we determine that a violation may have occurred, it is then up to the broadcaster to provide contrary evidence. If the broadcaster fails to provide such evidence, we may (as we do today) find that complainant's evidence is sufficient to determine that a violation has occurred. This burden

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<sup>1</sup> The courts also have approved the Commission's definition of "indecent." See *Action for Children's Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988); *Action for Children's Television v. FCC*, 932 F.2d 1504 (D.C. Cir. 1991), *cert. denied*, 112 S. Ct. 1282 (1992); *Action for Children's Television v. FCC*, 58 F.3d 654 (D.C. Cir. 1995), *cert. denied*, 116 S. Ct. 701 (1996).

<sup>2</sup> See 47 C.F.R. §73.3999; *Industry Guidance of the Commission's Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency*, Policy Statement, 16 FCC Rcd 7999 (2001).

<sup>3</sup> Our policy states that a complaint "must generally include a full or partial tape or transcript or significant excerpts of the program." See *id.* Notably, many in the industry (such as the licensee in this case) referred to this as "the tape or transcript requirement."

shifting should further alleviate some of the concerns that have been raised by consumers while still providing broadcasters with ample opportunity to defend their programming.

I support this process, as it will facilitate consumers' ability to file indecency complaints, maintain broadcasters' ability to dispute claims that their programming was indecent, and enable the Commission to enforce our rules more effectively. Accordingly, I support this *Order*, both for the conclusions it makes and the guidance it provides.